

IN THE
MISSOURI SUPREME COURT

NO. SC 85138

STATE OF MISSOURI, ex rel. JOHN HESS, M.D.

Relator,

v.

MARGARET M. NEILL, Circuit Court Judge, 22nd Judicial Circuit, Missouri,

Respondent.

APPEAL FROM THE CIRCUIT COURT OF ST. LOUIS CITY
CAUSE NO. 012-00056

OPENING BRIEF OF RELATOR JOHN HESS, M.D.

David Ivor Hares, Esq.
Missouri Bar Number 26800
Robert Joseph Amsler, Jr., Esq.
Missouri Bar Number 37545
David I. Hares, Esq. & Associates
7700 Bonhomme Avenue
St. Louis, Missouri 63105-1924
(314) 721-4033; (314) 721-7990 (Facsimile)
ATTORNEYS FOR RELATOR

TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES	6
JURISDICTIONAL STATEMENT.....	10
STATEMENT OF FACTS.....	11
I. Procedure Before the Circuit Court	11
II. Procedure Before the Appellate Court.....	16
III. Procedure Before This Court	18
POINTS RELIED ON.....	19
I. Relator is entitled to an order prohibiting Respondent from taking any action other than transferring this case from the St. Louis City to St. Louis County because Dr. Hess did not waive any objections to venue but filed a timely motion to transfer venue because this Court previously held that it did not see any logical reason for distinguishing between an extension of time effected by stipulation of the parties and one ordered by the Court pursuant to Rule 44.01 V.A.M.R. in that counsel for Dr. Hess obtained the approval of counsel for Plaintiffs for an additional thirty days to file any responsive pleading or motions including a motion contesting venue and filed the motion memorializing the agreement prior to the	

expiration of the original thirty days for the filing of a responsive pleading, motion, or challenge.....	19
II. Relator Hess is entitled to an order prohibiting Respondent from taking any action other than transferring this case from the St. Louis City to St. Louis County because venue is improper in the St. Louis City under §355.176.4, R.S.Mo. 1994 in that the cause of action, if any, accrued in St. Louis County, Missouri Baptist has its registered agent and principle place of business in St. Louis County, and BJC has its registered agent in St. Louis County.....	20
III. Relator Hess is entitled to an order prohibiting Respondent from taking any action other than transferring this case from the St. Louis City to St. Louis County because if venue must be separately considered, then the venue of Dr. Hess in relation to Missouri Baptist and BJC should have been considered and the case transferred to St. Louis County in that Dr. Hess allegedly performed the negligent acts in St. Louis County at Missouri Baptist and St. Louis County is the proper venue pursuant to §355.176.4, R.S.Mo. for Missouri Baptist.. ..	21
ARGUMENT.....	22
Standard of Review.....	22

I.	Relator is entitled to an order prohibiting Respondent from taking any action other than transferring this case from the St. Louis City to St. Louis County because Dr. Hess did not waive any objections to venue but filed a timely motion to transfer venue because this Court previously held that it did not see any logical reason for distinguishing between an extension of time effected by stipulation of the parties and one ordered by the Court pursuant to Rule 44.01 V.A.M.R. in that counsel for Dr. Hess obtained the approval of counsel for Plaintiffs for an additional thirty days to file any responsive pleading or motions including a motion contesting venue and filed the motion memorializing the agreement prior to the expiration of the original thirty days for the filing of a responsive pleading, motion, or challenge.....	22
II.	Relator Hess is entitled to an order prohibiting Respondent from taking any action other than transferring this case from the St. Louis City to St. Louis County because venue is improper in the St. Louis City under §355.176.4, R.S.Mo. 1994 in that the cause of action, if any, accrued in St. Louis County, Missouri Baptist has its registered agent and principle place of business in St. Louis County, and BJC has its registered agent in St. Louis County.....	30

III. Relator Hess is entitled to an order prohibiting Respondent from taking any action other than transferring this case from the St. Louis City to St. Louis County because if venue must be separately considered, then the venue of Dr. Hess in relation to Missouri Baptist and BJC should have been considered and the case transferred to St. Louis County in that Dr. Hess allegedly performed the negligent acts in St. Louis County at Missouri Baptist and St. Louis County is the proper venue pursuant to §355.176.4, R.S.Mo. for Missouri Baptist..	43
CONCLUSION.....	45
CERTIFICATE OF COMPLIANCE WITH MISSOURI SUPREME COURT RULE 84.06(b) AND (c) AND RULE 84.06(g)	48
CERTIFICATE OF SERVICE.....	49

TABLE OF AUTHORITIES

Page

CASES

Abney v. Niswonger

823 S.W.2d 31 (Mo.App. E.D. 1991).....36

Boatmen’s Bancshares, Inc. v. Director of Revenue

757 S.W.2d 574 (Mo. 1998).....22

Dan Ficken Pools, Inc. v. Flynn

592 S.W.2d 213 (Mo.App. E.D. 1979).....30

Euge v. Golden

551 S.W.2d 928 (Mo.App. St.L. 1977).....19, 28

Ferguson v. Long

107 S.W.2d 7 (Mo., Div.1 1937).....19, 28

Labrier v. Anheuser Ford, Inc.

621 S.W.2d 51 (Mo. banc 1981).....19, 28

Laser Vision Centers, Inc. v. Laser Vision Centers. Int’l, SpA

930 S.W.2d 29 (Mo. Ct. App. 1996).....22

Rothermich v. Gallagher

816 S.W.2d 194 (Mo. banc 1991).....30, 31, 36

St. Louis Health Care Network v. State

968 S.W.2d 145 (Mo. banc 1998).....20, 31

Sledge v. Town & Country Tire Centers, Inc.

654 S.W.2d 176 (Mo.App. E.D. 1983).....30

State ex rel. BJC Health System v. Neill

86 S.W.3d 138 (Mo.App. E.D. 2002).....33, 37, 38

State ex rel. City of St. Louis v. Kinder

698 S.W.2d 4 (Mo. banc 1984).....41

State ex rel. DePaul Hospital Ctr. v. Mummert

870 S.W.2d 820 (Mo. banc 1994).....31

State ex rel. Linthicum et al. v. Calvin

57 S.W.3d 855 (Mo. banc 2001).....20, 31

State ex. rel. Reedcraft Manufacturing, Inc. v. Kays

967 S.W.2d 703 (Mo.App. S.D. 1998).....22

State ex rel. Sims v. Sanders

886 S.W.2d 718 (Mo.App. E.D. 1994).....21, 43

State ex rel. Smith v. Gray

979 S.W.2d 190 (Mo. banc 1998).....30

State ex rel. SSM Health Care St. Louis v. Neill

78 S.W.3d 140 (Mo. banc 2002)16, 20, 21, 30, 31, 32, 33, 36, 37, 39, 40, 41, 42, 45

State ex rel. SSM Health Care St. Louis v. Neill

78 S.W.3d 145 (Mo. banc 2002).....16, 20, 31, 32, 33, 36, 37

State ex rel. Tarrasch v. Crow

622 S.W.2d 928 (Mo. 1981).....21, 44

State ex rel. Webb v. Satz

561 S.W.2d 290 (Mo. banc 1978).....41

State ex rel White v. Marsh

646 S.W.2d 357 (Mo. 1983).....19, 24, 26

Turnbough v. Gaertner

589 S.W.2d 290 (Mo. banc 1979).....21, 43, 44

STATUTES

§355.176.4. R.S.Mo.....10, 12, 20, 21, 30, 31, 32, 34, 35, 376, 38, 39, 41, 42, 44, 45, 46

§476.410, R.S.Mo.....20, 31, 36

§508.040, R.S.Mo.....41, 42

§508.060, R.S.Mo.....20, 41, 42

SUPREME COURT RULES

44.01 V.A.M.R.....10, 16, 19, 24, 26

51.01 V.A.M.R.....21, 43, 44

51.045 V.A.M.R.....10, 20, 31, 36

52.05(a) V.A.M.R.....21, 43

LOCAL RULE

Rule 21.7.....19, 25

JURISDICTIONAL STATEMENT

This case involves three issues. First, this case presents the issue of whether Rule 44.01 V.A.M.R. requires a defendant to obtain the approval of a circuit judge for an extension of time to file an answer, responsive pleading, or other motion when the plaintiffs, through counsel, consent to an initial request for an extension of time for thirty additional days to file an answer, responsive pleading, or motion and the defendant memorializes the agreement between the parties in the form of an entry of appearance noting the agreement for additional time and filed the entry memorializing the agreement within the time prescribed for filing the answer, responsive pleading, or other motion. The second issue presented is what is the proper venue of a case pursuant to §355.176.4. R.S.Mo. involving two non-profit corporations that only differ with regard to venue in that their principle places of business are not in the same county. Otherwise, the cause of action and the place of the registered agents of both non-profit corporations are in the same county. Finally, does Rule 51.045 V.A.M.R. require the splitting of the cause of action such that the defendants with no relationship to St. Louis City are transferred to St. Louis County and the defendant with a relationship to St. Louis City is maintained in the lawsuit in St. Louis City. Both the circuit court and Court of Appeals, Eastern District, have reviewed these issues. As such, these issues involve the rulings of inferior courts and this is an original remedial writ. Therefore, this Court has jurisdiction pursuant to Article V, Section 4 of the Missouri Constitution.

STATEMENT OF FACTS

I. Before the Circuit Court

As Respondent admitted in her response to this writ, on January 5, 2001, Plaintiffs filed a wrongful death and lost chance of survival action entitled *David Trimble, individually, and as Plaintiff ad Litem, Roger D. Trimble, Thomas A. Trimble, Timothy A. Trimble, Daniel K. Trimble, and Patricia D. Wilson v. BJC Health System, a Missouri not-for-profit corporation, and Missouri Baptist Medical Center, a Missouri not-for-profit corporation*, Cause No. 012-00056, in the Circuit Court of St. Louis City. (Exhibit 1).¹ Plaintiffs named only BJC Health System (hereinafter BJC) and Missouri Baptist Medical Center (hereinafter Missouri Baptist) as defendants in the *Petition* and noted that they were both non-profit corporations. (Exhibit 1). The caption of the *Petition*, as well as the body of the *Petition*, specifically listed the defendants as Missouri not-for-profit corporations along with the names and addresses of the registered agents as the party to be served. The service address for each not-for-profit corporation was located in St. Louis County, Missouri. (Exhibit 1, Caption and ¶¶ 3 and 4). Also, Plaintiffs stated in their *Petition* that all of the care for the decedent took place at Missouri Baptist, which is located in St. Louis County, Missouri and the *Petition* does not allege that any care was rendered in St. Louis City or that the cause of action arose in St. Louis City. (Exhibit 1, ¶¶ 7 and 10).

¹ All exhibit references are to the exhibits attached to the *Petition for Writ of Prohibition or, in the Alternative, Petition for Writ of Mandamus* filed by Relator Hess in this case.

According to the Proofs of Service executed by the Sheriff of St. Louis County, the sheriff served each of these defendants on January 29, 2001, in St. Louis County, Missouri. (Exhibit 2 [BJC] and Exhibit 3 [Missouri Baptist]). Respondent admitted in her response to this writ that Defendants BJC and Missouri Baptist each timely filed their own motions to dismiss or in the alternative motions to transfer in a timely manner on February 28, 2001. (Exhibit 5 [BJC Motion] and Exhibit 6 [Missouri Baptist Motion]). Defendants BJC and Missouri Baptist both asserted in their venue motions that venue was improper in St. Louis City pursuant to §355.176.4 R.S.Mo. (Exhibit 5, ¶ 8 and Exhibit 6, ¶ 6).

Plaintiffs filed responses to the venue motions of BJC and Missouri Baptist and alleged that, pursuant to the non-profit venue statute, venue was proper in St. Louis City. (Exhibit 8, ¶5 and Exhibit 7, ¶8 incorporating into its response, Exhibit 8).

Subsequently, Plaintiffs filed a request for leave to file a first amended petition on September 12, 2001, and filed their *First Amended Petition* adding John Hess, M.D. (hereinafter Hess) as a defendant. (Exhibit 9 and Exhibit 10). According to the Proof of Service executed by the Sheriff of St. Louis County, the sheriff served Hess on September 27, 2001, in St. Louis County, Missouri. (Exhibit 11). The Proof of Service was entered into the docket minutes on October 1, 2001. (Exhibit 4).

The allegations against both Missouri Baptist and BJC within the *First Amended Petition* remained the same substantively. Specifically, the allegations with regard to BJC remained that BJC exercised control over Missouri Baptist. (Exhibit 1, ¶ 3, and Exhibit 10, ¶ 3).

As Respondent admitted in the response to the writ, the undersigned counsel entered his appearance on behalf of Hess on October 26, 2001, the twenty-ninth day after service, and requested an additional thirty days until and including November 26, 2001, to file a response, all with the consent of Plaintiffs' counsel. In this entry of appearance, Hess specifically and explicitly memorialized the agreement that Hess reserved to himself all "defenses accruing to [Hess] that might have been raised by the original return date including an objection to personal jurisdiction over this defendant, or **venue in this judicial circuit.**" (Exhibit 12, emphasis added).

Hess filed his *Motion of Defendant John Hess, M.D. to Transfer Venue* at least by November 26, 2001, the date the motion was due according to the investigation of the Circuit Clerk, Mr. Mariano V. Favazza. (Exhibit 21, exhibit A.). Unfortunately, due to heightened tensions following the horrendous events of September 11, 2001, and the subsequent anthrax mailings, as well as the crush of mail over the Thanksgiving Holiday, the Circuit Clerk's Office erred by not stamping the date and time of the receipt of the venue motion of Hess. (Exhibit 21, exhibit A.). The only stamp on the pleading is in red ink that is used when a document is distributed to a trial courtroom clerk for making an entry into the computer record. (Exhibit 21, exhibit A.). The Circuit Clerk specifically stated in his letter that his office did not stamp the date and time of the receipt of the *Motion of Defendant John Hess, M.D. to Transfer Venue*. (Exhibit 21, exhibit A). Thus the stamp on the document is an internal stamp used after receipt of a document and not the stamp used when the document is received. The Circuit Clerk did conclude that Plaintiffs' counsel, who shares the same mailing facility as the Circuit Clerk's Office,

received the venue motion on or before November 26, 2001, after the circuit clerk spoke with Plaintiffs' counsel, and therefore, he believes, upon investigation, that the Circuit Clerk's office also received the venue motion on or before November 26, 2001. (Exhibit 21, exhibit A.).

In Hess' motion to transfer venue, Hess specifically and explicitly joined in the motions of BJC and Missouri Baptist with regard to venue and that included the venue objections based on the non-profit corporate venue statute. (Exhibit 15, ¶ 28). Hess filed his affidavit with the Circuit Court on December 14, 2001, stating that he lived in St. Louis County, that Missouri Baptist was in St. Louis County, and that all of the treatment that was provided to the decedent took place at Missouri Baptist in St. Louis County. (Exhibit 17). Subsequently, on April 11, 2002, Hess filed a supplemental affidavit stating that he lived at his residence in St. Louis County from the date the plaintiffs filed the original *Petition* through the date of the supplemental affidavit, which was after the filing of the *First Amended Petition*, that he works at Missouri Baptist, which is located in St. Louis County, and that all of the treatment at issue in *Petition* and *First Amended Petition* took place at Missouri Baptist. (Exhibit 18).

On May 6, 2002, BJC and Missouri Baptist filed a Memorandum to Court submitting Certificates of Fact from the Missouri Secretary of State's Office regarding the location of the office of the registered agent of BJC and Missouri Baptist, the affidavit of Ms. Carolyn Roth, and a copy of the supplemental affidavit of Hess. (Exhibit 19). These documents certified that on the date the Plaintiffs filed the *First Amended Petition*,

the registered agent for both BJC and Missouri Baptist was in St. Louis County and that the cause of action arose in St. Louis County at Missouri Baptist.

The venue motions of the Defendants in the underlying cause were heard on May 7, 2002, before Respondent, who took the motions under advisement and noted she would issue an order with regard to the motions. (Exhibit 20). Hess filed his *Memorandum of Law in Support of the Motion of Defendant John Hess, M.D., to Transfer Venue* on May 14, 2002, and set forth his position with regard to the case as well as joining in the venue motions and briefs of BJC and Missouri Baptist with their attached exhibits stating that the motions supplement and complement Hess' position. (Exhibit 21, p. 1). BJC and Missouri Baptist filed their *Memorandum of Law of Defendants BJC Health System and Missouri Baptist Medical Center in Support of their Motions to Dismiss, or in the Alternative, Motions to Transfer* on May 14, 2002, arguing the non-profit corporate venue provisions. (Exhibit 22). Plaintiffs filed their *Memorandum in Opposition to Defendant John Hess, M.D.'s Motion to Transfer Venue* in response to Hess' motion. (Exhibit 23). In this document, Plaintiffs in the underlying case admitted that they agreed to an extension of time to allow Relator Hess to file a responsive pleading within the time to file a responsive pleading after service. (Exhibit 23, p. 2-3). Plaintiffs further stated in their brief that they received their copy of the Hess' motion to transfer venue on or before November 26, 2001, the date of the agreed to extension. (Exhibit 23, p. 3). In response to Hess' incorporating the BJC and Missouri Baptist motions into his motion and memorandum, Plaintiffs incorporated their response to the motion to transfer venue of BJC and Missouri Baptist. (Exhibit 23, p. 5-6).

Plaintiffs filed their *Memorandum in Opposition to Defendants BJC and Missouri Baptist Medical Center's Motions to Dismiss or in the Alternative to Transfer* in response to the motions of BJC and Missouri Baptist. (Exhibit 24). BJC and Missouri Baptist filed a memorandum with the Circuit Court advising it of the Supreme Court's then recent decisions in *State ex rel. SSM Health Care St. Louis v. Neill*, 78 S.W.3d 140 (Mo. banc 2002) and *State ex rel. SSM Health Care St. Louis v. Neill*, 78 S.W.3d 145 (Mo. banc 2002), on July 30, 2002. (Exhibit 25).

Respondent Neill then issued her order of July 31, 2002, and held that Hess waived his challenge to venue because he failed to secure court permission for an additional amount of time to respond to the *First Amended Petition* even though Hess had the consent of Plaintiff. (Exhibit 26, p. 2). Respondent Neill specifically stated “[W]hile plaintiff may have agreed to allow Mr. Hess an additional thirty days to file a responsive pleading, Mr. Hess did not obtain leave of court to file motion to transfer venue out of time as required by Rule 44.01(b). Thus, the Court finds that Dr. Hess waived any objections to venue by not filing a timely motion to transfer.” (Exhibit 26, p. 2). Respondent Neill also denied the motion to transfer venue of BJC and Missouri Baptist finding that each of them also waived venue by not timely filing motions to transfer venue. (Exhibit 26, p. 2).

II. Before the Appellate Court

BJC and Missouri Baptist filed a *Petition for Writ of Mandamus and/or Prohibition* with the Eastern District Court of Appeals, Number ED81798 seeking enforcement of the venue motions and transfers based on the fact that all motions to

transfer venue of BJC and Missouri Baptist were timely filed with the Circuit Court in contrast to the finding of Respondent. (Exhibit 27 and 28.) The Court of Appeals, Eastern District, issued an Order dated October 29, 2002, directing Respondent to set aside her order of July 31, 2002, and thereafter rule on the pending motions because the Court of Appeals found the basis of Respondent's denial of the motions to dismiss or transfer were erroneous and could not stand. (Exhibit 29.)

Respondent then issued a new order on November 27, 2002, but she only addressed the timeliness of the motions of BJC and Missouri Baptist. Respondent made no finding with regard to Hess or the timeliness of the filing of his motion to transfer venue. (Exhibit 30.) Respondent did hold however that venue as to Missouri Baptist was not proper in St. Louis City but that it was proper as to BJC. (Exhibit 30, p. 3-4, 11.) Respondent stated in her order of November 27, 2002, that the law was unclear as to how venue should be determined when venue was proper as to one non-profit defendant but improper as to the other when the plaintiff alleged joint liability. (Exhibit 30, p. 4.) Respondent ultimately evaluated venue as to Missouri Baptist and BJC separately and ordered the case as to Missouri Baptist transferred to the Circuit Court of St. Louis County, retained jurisdiction over the part of the case with regard to BJC, and made no mention of Hess. (Exhibit 30, p. 11). The Court of Appeals, Eastern District, then issued its Order denying the writ of BJC and Missouri Baptist on December 5, 2002. (Exhibit 31).

Hess then filed his *Petition for Writ of Mandamus and/or Prohibition* before the Court of Appeals, Eastern District alleging that Respondent should have reconsidered her

decision regarding whether Dr. Hess appropriately requested additional time and that Respondent should be required to transfer the case to St. Louis County, Missouri because both BJC and Missouri Baptist are non-profit corporations and venue is proper as to both of these defendants in St. Louis County as incorporated by Hess in his *Motion of Defendant John Hess, M.D. to Transfer Venue*. Furthermore, if Respondent was correct in reconsidering the proper venue of the defendants, then she should also have considered the separate venue of Hess. (Exhibit 32). The Court of Appeals, Eastern District, issued an order denying the petition of Hess. (Exhibit 33).

III. Before the Supreme Court

As a result of the rulings before the Eastern District of the Court of Appeals on the different writs, all parties made an appeal to this Court and all were granted. The Plaintiffs filed their writ with this Court on February 26, 2003, Supreme Court Number 85132. Missouri Baptist and BJC filed their writ with this Court on February 28, 2003 and it is Supreme Court Number 85135. Dr. Hess filed his writ with this Court on March 3, 2003. This Court then issued a Preliminary Writ of Prohibition in all three cases on April 1, 2003.

POINTS RELIED ON

- I. Relator is entitled to an order prohibiting Respondent from taking any action other than transferring this case from the St. Louis City to St. Louis County because Dr. Hess did not waive any objections to venue but filed a timely motion to transfer venue because this Court previously held that it did not see any logical reason for distinguishing between an extension of time effected by stipulation of the parties and one ordered by the Court pursuant to Rule 44.01 V.A.M.R. in that counsel for Dr. Hess obtained the approval of counsel for Plaintiffs for an additional thirty days to file any responsive pleading or motions including a motion contesting venue and filed the motion memorializing the agreement prior to the expiration of the original thirty days for the filing of a responsive pleading, motion, or challenge.**

Euge v. Golden, 551 S.W.2d 928 (Mo.App. St.L. 1977)

Ferguson v. Long, 107 S.W.2d 7 (Mo., Div.1 1937)

Labrier v. Anheuser Ford, Inc., 621 S.W.2d 51 (Mo. banc 1981)

State ex rel White v. Marsh, 646 S.W.2d 357 (Mo. 1983)

44.01 V.A.M.R.

Rule 21.07 of the Twenty-Second Judicial Circuit

II. Relator Hess is entitled to an order prohibiting Respondent from taking any action other than transferring this case from the St. Louis City to St. Louis County because venue is improper in the St. Louis City under §355.176.4, R.S.Mo. 1994 in that the cause of action, if any, accrued in St. Louis County, Missouri Baptist has its registered agent and principle place of business in St. Louis County, and BJC has its registered agent in St. Louis County.

St. Louis Health Care Network v. State, 968 S.W.2d 145 (Mo. banc 1998)

State ex rel Linthicum et al. v. Calvin, 57 S.W.3d 855 (Mo. banc 2001)

State ex rel. SSM Health Care St. Louis v. Neill, 78 S.W.3d 140 (Mo. banc 2002)

State ex rel. BJC Health System v. Neill, 86 S.W.3d 138 (Mo.App. E.D. 2002).

§355.176.4, R.S.Mo. 1994.

§476.410, R.S.Mo.

§508.060, R.S.Mo.

51.045 V.A.M.R.

III. Relator Hess is entitled to an order prohibiting Respondent from taking any action other than transferring this case from the St. Louis City to St. Louis County because if venue must be separately considered, then the venue of Dr. Hess in relation to Missouri Baptist and BJC should have been considered and the case transferred to St. Louis County in that Dr. Hess allegedly performed the negligent acts in St. Louis County at Missouri Baptist and St. Louis County is the proper venue pursuant to §355.176.4, R.S.Mo. for Missouri Baptist.

State ex rel. Sims v. Sanders, 886 S.W.2d 718 (Mo.App. E.D. 1994)

State ex rel. SSM Health Care St. Louis v. Neill, 78 S.W.3d 140 (Mo. banc 2002)

State ex rel. Tarrasch v. Crow, 622 S.W.2d 928 (Mo. 1981)

Turnbough v. Gaertner, 589 S.W.2d 290 (Mo. banc 1979)

§355.176.4, R.S.Mo.

Rule 51.01 V.A.M.R.

Rule 52.05(a) V.A.M.R

ARGUMENT

Standard of Review

A writ of prohibition or, in the alternative, writ of mandamus is a proceeding to test whether Respondent is acting in excess of her jurisdiction. *State ex. rel. Reedcraft Manufacturing, Inc. v. Kays*, 967 S.W.2d 703, 704 (Mo.App. S.D. 1998). The determination of jurisdiction is a question of law that the Court should consider *de novo*. *Boatmen's Bancshares, Inc. v. Director of Revenue*, 757 S.W.2d 574, 574-575 (Mo. 1998); *Laser Vision Ctrs., Inc. v. Laser Vision Ctrs. Int'l, SpA*, 930 S.W.2d 29, 31 (Mo. Ct. App. 1996).

- I. Relator is entitled to an order prohibiting Respondent from taking any action other than transferring this case from the St. Louis City to St. Louis County because Dr. Hess did not waive any objections to venue but filed a timely motion to transfer venue because this Court previously held that it did not see any logical reason for distinguishing between an extension of time effected by stipulation of the parties and one ordered by the Court pursuant to Rule 44.01 V.A.M.R. in that counsel for Dr. Hess obtained the approval of counsel for Plaintiffs for an additional thirty days to file any responsive pleading or motions including a motion contesting venue and filed the motion memorializing the agreement prior to the expiration of the original thirty days for the filing of a responsive pleading, motion, or challenge.**

Relator Hess obtained consent of Plaintiffs for an additional thirty days to file a responsive pleading to the *First Amended Petition* and filed this entry with the Court

within the original thirty days. Then, within the additional time, Relator Hess filed a motion to transfer venue and supplemented this with two affidavits. Respondent Neill, *sua sponte*, found in her order of July 31, 2002, that Hess waived his right to challenge venue when he failed to obtain Court approval for the entry for additional time. Such a finding was an abuse of discretion when not even the Plaintiffs in the underlying action made the objection.

Relator Hess was served with the *First Amended Petition* on September 27, 2001, adding Dr. Hess to the claims against BJC and Missouri Baptist. (Exhibit 11). Prior to the expiration of the time to file a responsive pleading, Relator Hess filed an entry of appearance noting the agreement for additional time that was with the consent of the Plaintiffs. (Exhibit 12 and 23, p. 4-5). This motion requested an additional thirty days to and including November 26, 2001. (Exhibit 12). Relator Hess then filed his *Motion of Defendant Hess, M.D. to Transfer Venue* at least by November 26, 2001. (Exhibit 15; Exhibit 21, Exhibit A). At the time the motion to transfer venue was argued and briefed, Plaintiffs did not allege that the failure to obtain Court approval of the agreement for an extension of time to file a responsive pleading between Plaintiffs and Relator Hess was a cause of waiver. Instead, Respondent Neill, on her own, determined that this failure was cause for waiver of the right to challenge venue.

Missouri law has not directly confronted the issue in the past of whether an agreement of counsel for an extension of time to file a responsive pleading that is timely filed with the circuit clerk but not formally approved by the court constitutes a waiver of defenses. However, there is a similar case. This Court stated that it did not know of any

logical basis for distinguishing between an extension of time effected by stipulation of the parties and one ordered by the court under Rule 44.01(b), V.A.M.R. *State ex rel White v. Marsh*, 646 S.W.2d 357, 361 (Mo. 1983).

In *White*, the plaintiffs filed a suit against The Mayo Clinic and The Mayo Foundation amongst others alleging medical malpractice. In response to the suit, defendants Mayo timely filed a motion for an extension of time to investigate the allegations. *Id.*, at 358. The circuit court granted the motion two days after the time for filing a responsive pleading expired. *Id.* (The defendants Mayo were served on January 24, 1980, and their response was due on February 23, 1980. The circuit court order was issued on February 25, 1980.) The order of the circuit court gave the Mayo defendants an additional thirty days. *Id.* Within the time allowed by the order granting additional time, the Mayo defendants filed a *Motion to Dismiss for Lack of Jurisdiction over the Person or to Dismiss for Insufficiency of Process, and to Quash Purported Service of Process*. This Court, after reviewing the law with regard to “special appearances,” determined that the entry did not constitute a waiver of defenses. The Court went further and also stated that “[T]here is no logical basis for distinguishing between an extension of time effected by stipulation of the parties and one ordered by the court under Rule 44.01(b).” *Id.*, at 361.

This Court is stating in the *White* case that not only does an extension of time to file a responsive pleading not waive any defenses, but this Court is also indicating that it does not see a reason why such an agreement for thirty additional days effected by an agreement of the parties should not be honored by the court. Indeed, it does not seem

logical to find a waiver of a defense when opposing counsel, who is charged with zealously representing his client, agrees, as a matter of common, professional courtesy, to allow an extension of time to investigate the allegations and file responsive pleadings. Surely counsel for the plaintiffs will ensure that the interests of the plaintiffs are adequately represented and that counsel for one of the defendants is not just delaying the matter inappropriately. Respondent, by issuing her ruling about the waiver of the venue issue by Dr. Hess based on Dr. Hess' not obtaining the court's approval, was bringing forth a defense that not even the Plaintiffs argued or briefed. (Exhibits 16 and 23). Indeed, in this case Dr. Hess only requested and obtained one extension for thirty days and did file his responsive pleadings on or before the date for the extension expired. There is no argument that Dr. Hess was inappropriately delaying the case.

The Local Rules of Court for the Twenty-Second Judicial Circuit also acknowledge that an agreement can be enforced so long as it is filed with the court. Under Rule 21.7, the St. Louis City Circuit Court stated that no agreement, understanding, or stipulation of counsel would be recognized or enforced unless made in writing and filed in the case. The rule is stating by implication that the Court will enforce an agreement of counsel so long as the agreement is reduced to writing and filed in the case. Otherwise, why issue a rule requiring agreements to be in writing and filed with the court. The circuit court could have just as easily stated it would not enforce any stipulation of the parties, whether in writing or not and whether filed with the court or not. But the local rule does not state such. Instead, the local rule requires the agreement to be in writing and filed with the court and that the court will then enforce the

agreement. This type of agreement is analogous to the parties agreeing to the entering of an order allowing one party additional time to answer overdue discovery. The parties reach an agreement allowing an additional ten days and then file that agreement with the Court. This action keeps the parties from clogging court dockets with discovery motions that professionals can ameliorate through professional courtesy. However, if the party then fails to file the discovery, then the court will provide some sanction for the continued failure to answer discovery. The stipulation of Plaintiffs and Dr. Hess was in writing and filed in the court. Plaintiffs admitted that the entry and request for additional time was with their consent in their memorandum filed with the court on or about May 14, 2002. (Exhibit 23, p. 2-3). Plaintiffs did not argue or brief anywhere in their memorandum that Dr. Hess waived his right to a defense on the basis of venue due to failure to obtain the court's approval of the extension request. Plaintiffs did not do this because as a matter of professional courtesy Plaintiffs had willingly extended an additional thirty days to Dr. Hess to file a responsive pleading including a defense as to venue. Yet, Respondent Neill, on her own, determined that the failure of Dr. Hess to obtain the court approval of an agreed to extension of time to file a responsive pleading would not be enforced despite the local rule.

Under the law, the request for an extension of time filed by consent but without court approval was appropriate. This Court in *White* noted that it saw no logical reason for not allowing an additional time to file a responsive pleading when that extension is obtained by consent without court approval pursuant to Rule 44.01(b), V.A.M.R. This interpretation of the law constitutes a common sense approach to an application of the

rules and the practice of law. Further, the local rules indicate that the court will enforce agreements by counsel so long as the agreements are written and filed with the court. The rule augments this common sense approach. Yet despite the law and the local rule, Respondent did not get to the merits of the motion of Dr. Hess but instead denied the motion to transfer venue as untimely filed. This order of July 31, 2002, with regard to Relator Hess must not stand because it requires Dr. Hess to defend the case in an inappropriate venue and did not even reach the merits of the issue. Had Respondent Neill reached the merits of the issue of venue, she should have determined the proper venue of the entire case is the Circuit Court of St. Louis County.

The Respondent has made a contention in her response to the writ that even if the Court were to consider the entry as preserving the time to file the motion, the motion of Relator Hess to transfer venue is on its face untimely. Respondent bases this contention on a date stamped on Exhibit 15 as the date that governs the proper filing as that is the date received the Circuit Clerk of the City of St. Louis and therefore the motion itself was filed out of time. However, that is not a true statement of the facts. While Exhibit 15 does bear a date stamp of November 29, 2001, the Circuit Clerk wrote in a letter, Exhibit 21, exhibit A, that the date November 29, 2001, stamped in red ink on the motion of Relator Hess is a distribution marking. (Exhibit 21, exhibit A). It is not the time and date stamp from his office. (Exhibit 21, exhibit A). In fact, the Circuit Clerk unequivocally states that his “mailroom erred when it receipted [Hess’] Motion by not time stamping the date and time of its receipt.” (Exhibit 21, exhibit A). The Circuit Clerk noted the anthrax mailings and Thanksgiving mail had caused the error. (Exhibit 21, exhibit A). The

Circuit Clerk concluded that more likely than not he had the motion of Relator Hess on or before November 26, 2001. (Exhibit 21, exhibit A). November 26, 2001, was the due date for the motion pursuant to the entry and agreement of counsel. (Exhibit 12).

With regard to Relator Hess' motion, Respondent's contention that the date stamped is the date received is not accurate. The law holds that the date and time stamp does not constitute the filing of a paper. *Labrier v. Anheuser Ford, Inc.*, 621 S.W.2d 51, 54 (Mo. banc 1981). The important date is the date the document is received. *Euge v. Golden*, 551 S.W.2d 928 (Mo.App. St.L. 1977). As this Court has stated in the past: "The indorsement though required to be made by the clerk when he receives a paper, does not constitute the filing of the same. The filing is the actual delivery of the paper to the clerk without regard to any action that he may take thereon. If the clerk commits a clerical error, or makes a mistake in reference to the time at which he received the paper, that will not make any difference. He may indorse upon it the wrong date, or an impossible date, and still the real date of the filing will be the same." *Ferguson v. Long*, 107 S.W.2d 7, 10 (Mo., Div.1 1937).

The date on Relator Hess' *Motion of Defendant John Hess, M.D. to Transfer Venue* is not the time and date stamp but an internal stamp. Moreover, when the discrepancy on the filing date was brought to the attention of the Circuit Clerk, he performed an investigation that disclosed the motion was in his office on or before November 26, 2001. The Circuit Clerk is an impartial witness and charged with the filing of the papers. It was his investigation in this matter that disclosed the error in his office such that there is no notation of the proper filing date of the motion. The Circuit

Clerk concluded he had this document by November 26, 2001, at the latest because the Plaintiffs had it by that date, the Plaintiffs used the same postal facility, and the motion bore the same mailing date as the Plaintiffs' copy of the motion. The Circuit Clerk recognized the problems in the receipt of the motion due to the anthrax problem and the Thanksgiving mail load. His office made an error and he certified that the motion was in his office on or before November 26, 2001. That is the important fact and thus the motion challenging venue was timely filed.

Therefore, this Court must direct Respondent to take no further action but to transfer this case to St. Louis County because Relator Hess timely filed his entry and as a matter of professional courtesy the agreed extension of time should be enforced allowing Relator Hess additional time to file his venue challenge. This venue challenge was then timely delivered to the Circuit Clerk as noted in his investigation.

II. Relator Hess is entitled to an order prohibiting Respondent from taking any action other than transferring this case from the St. Louis City to St. Louis County because venue is improper in the St. Louis City under §355.176.4, R.S.Mo. 1994 in that the cause of action, if any, accrued in St. Louis County, Missouri Baptist has its registered agent and principle place of business in St. Louis County, and BJC has its registered agent in St. Louis County.

Defendant Hess joined in the motions of BJC and Missouri Baptist with regard to their motions to transfer the case due to improper venue. Both BJC and Missouri Baptist based their improper venue argument on the non-profit corporate venue statute, §355.176.4, R.S.Mo. 1994. Respondent Neill responded to the substantive issue of venue in her order of November 27, 2002, noted the applicability of the corporate non-profit venue statute but did not transfer the case to the Circuit Court of St. Louis County despite unambiguous law requiring her to do so. Now Relator Hess will be required to defend this case in an improper venue because Respondent misapplied the law.

As noted by this Court, venue is a creature of statute. *Rothermich v. Gallagher*, 816 S.W.2d 194, 196 (Mo. banc 1991); *State ex rel. Smith v. Gray*, 979 S.W.2d 190, 191 (Mo. banc 1998); *State ex rel. SSM Health Care St. Louis v. Neill*, 78 S.W.3d 140, 142 (Mo. banc 2002). “The purpose of the venue statutes is to provide a convenient, logical and orderly forum for litigation.” *Rothermich*, at 196; and citing *Sledge v. Town & Country Tire Centers, Inc.*, 654 S.W.2d 176, 180 (Mo.App. E.D. 1983) and *Dan Ficken Pools, Inc. v. Flynn*, 592 S.W.2d 213 (Mo.App. E.D. 1979). Once a court determines

that venue is improper, the court must transfer the case to a circuit court of proper venue. §476.410, R.S.Mo., 51.045 V.A.M.R., and *Rothermich* at 197.

According to Missouri law, the date a suit is brought determines the appropriateness of the venue of a suit. *State ex rel. DePaul Hospital Ctr. v. Mummert*, 870 S.W.2d 820, 823 (Mo. banc 1994); *State ex rel Linthicum et al. v. Calvin*, 57 S.W.3d 855, 857 (Mo. banc 2001). Whenever a plaintiff brings a defendant into a lawsuit, whether by original petition or by amended petition, a suit is “brought” for purposes of determining venue. *Linthicum* at 858.

With regard to non-profit corporations, the non-profit corporate statute applies. That statute provides in subsection four that: “Suits against a nonprofit corporation shall be commenced only in one of the following locations: 1) The county in which the nonprofit corporation maintains its principal place of business; 2) The county where the cause of action accrued; 3) The county in which the office of the registered agent for the nonprofit corporation is maintained.” §355.176.4, R.S.Mo. 1994. Subsection four of §355.176, R.S.Mo. is still applicable and the law of the State of Missouri as held by this Court when it decided *St. Louis Health Care Network v. State*, 968 S.W.2d 145 (Mo. banc 1998). This Court stated that the subsequent attempt by the legislature to repeal §355.176.4, R.S.Mo. was unconstitutional. *St. Louis Health Care Network v. State*, 968 S.W.2d 145, 149 (Mo. banc 1998). The Court affirmed its decision that §355.176.4, R.S.Mo. 1994 still applies to determine the venue of non-profit corporations in *SSM Health Care St. Louis v. Neill*, at 143; and *SSM Health Care St. Louis v. Neill*, 78 S.W.3d 145, 146 (Mo. banc 2002). In these latter two recently decided cases, this Court

was presented with the issue of where a non-profit corporation could be sued. After determining that the non-profit corporation could only be sued in one of the three locations set forth in the statute, the Court ordered Respondent Neill to transfer these cases to a proper venue. *State ex rel. SSM Health Care St. Louis*, at 145; and *State ex rel. SSM Health Care St. Louis*, at 146.

In conformity with these venue principles, venue in this case must be determined as of the date that the *First Amended Petition* was brought as that was the date that Relator Hess was added as a defendant in the case. Thus the parties on the date the *First Amended Petition* was filed were Missouri Baptist, BJC, and Relator Hess. Dr. Hess filed his motion to transfer venue for reasons stated in that motion and, in addition to his own reasons, incorporated explicitly the objections of BJC and Missouri Baptist to venue. (Exhibit 15, ¶ 28). The objections of BJC and Missouri Baptist with regard to venue that Relator Hess incorporated into his motion to transfer were based on the application of the corporate non-profit venue statute to BJC and Missouri Baptist and that the application of the law mandated the transfer of the venue of the case to St. Louis County. Thus the argument below is Dr. Hess' incorporation of the non-profit venue statute into his motion to transfer venue.

An application of the non-profit corporate venue statute to the facts of the case at the time of the filing of the *First Amended Petition* with regard to BJC and Missouri Baptist mandates that the case be transferred to St. Louis County. As this Court clearly stated in each of the *SSM* cases, §355.176.4, R.S.Mo. 1994 still applies to non-profit corporations and is the determiner of venue. *State ex rel. SSM Health Care St. Louis v.*

Neill, 78 S.W.3d 140, 143 (Mo. banc 2002); *State ex rel. SSM Health Care St. Louis v. Neill*, 78 S.W.3d 145, 146 (Mo. banc 2002). This Court held that pursuant to this statute there are only three possible locations where venue of a suit involving a non-profit corporation is appropriate: 1) The county in which the nonprofit corporation maintains its principal place of business; 2) The county where the cause of action accrued; and, 3) The county in which the office of the registered agent for the nonprofit corporation is maintained. *State ex rel. SSM Health Care St. Louis v. Neill*, 78 S.W.3d 140, 145, (Mo. banc 2002); *State ex rel. SSM Health Care St. Louis v. Neill*, 78 S.W.3d 145, 146, (Mo. banc 2002). These three factors are the only factors that need to be determined in a case involving the non-profit corporation statute when determining venue. *State ex rel. BJC Health System v. Neill*, 86 S.W.3d 138 (Mo.App. E.D. 2002). Applying the statute and holdings of the Supreme Court, venue as to BJC and Missouri Baptist is only appropriate in St. Louis County.

The Plaintiffs alleged in their *First Amended Petition* that both BJC and Missouri Baptist are non-profit corporations and listed the address of their registered agents in St. Louis County. (Exhibit 1, Caption and ¶¶s 3 and 4; Exhibit 10, ¶¶s 3 and 4). In addition, BJC and Missouri Baptist filed certificates from the Secretary of State's Office certifying that the registered agent for both BJC and Missouri Baptist on September 12, 2001, was Mr. K. Scott Gronowski and that the registered office for both BJC and Missouri Baptist was at 3015 N. Ballas Road, St. Louis, Missouri 63131. (Exhibit 19). This was augmented with the affidavit of Ms. Carolyn Roth, J.D., R.N. who upon her oath stated that the only office of Missouri Baptist for its registered agent on September 12, 2001,

through the date of the affidavit was the address noted above at 3015 North Ballas Road, St. Louis Missouri, 63131. (Exhibit 19, Affidavit of Ms. Roth, ¶ 4). This is the address of Missouri Baptist in St. Louis County, Missouri. (Exhibit 19, Affidavit of Ms. Roth ¶ 5). Thus the address of the registered agent for both BJC and Missouri Baptist on September 12, 2001, was at Missouri Baptist located in St. Louis County. This shows that both non-profit corporations, BJC and Missouri Baptist, can be sued in St. Louis County pursuant to §355.176.4(3), R.S.Mo. 1994.

Furthermore, the allegations of the Plaintiff that give rise to the suit all occurred in St. Louis County. The Plaintiffs alleged both in their *First Amended Petition* that all of the care for their decedent occurred at Missouri Baptist. (Exhibit 1, ¶¶ 7 and 10 and Exhibit 10, ¶¶ 8 and 11). The *First Amended Petition* does not allege that any care occurred in St. Louis City. (Exhibit 1 and 10). The only allegations against BJC are that it is vicariously liable for the actions of its employees through its member institutions, including Missouri Baptist. (Exhibit 1, ¶ 3 and Exhibit 10, ¶ 3). Ms. Roth stated in her affidavit that all of the care that is the subject of the *First Amended Petition* occurred only at Missouri Baptist in St. Louis County, Missouri. (Exhibit 19, Affidavit of Ms. Roth, ¶ 5). Likewise, Dr. Hess said in his affidavit that all of the care provided to the decedent that is the subject of the *First Amended Petition* occurred at Missouri Baptist in St. Louis County. (Exhibit 17 and 18, ¶ 8). Applying these allegations and facts to the venue statute, Missouri Baptist is subject to suit in St. Louis County because the alleged wrong occurred at it in St. Louis County and BJC is also subject to suit in St. Louis County because it is allegedly liable for the actions of its member institution, Missouri Baptist.

Thus the alleged wrong for which both BJC and Missouri Baptist are liable occurred in St. Louis County and St. Louis County would be the county where the cause of action accrued. §355.176.4 (2), R.S.Mo. 1994.

Missouri Baptist may also be sued in St. Louis County for a third reason; it maintains its principle place of business in St. Louis County. As noted in the affidavits of Ms. Roth and Dr. Hess, treatment occurred at Missouri Baptist in St. Louis County. (Exhibit 19, Affidavit of Ms. Roth, ¶ 5, and Exhibit 18, ¶ 8). Therefore, venue is also proper under this prong of the venue statute as to Missouri Baptist. §355.176.4 (1), R.S.Mo. 1994.

As set forth above, under the applicable venue statute for non-profit corporations, venue for both BJC and Missouri Baptist is proper in St. Louis County pursuant to §355.176.4 (2) and (3), R.S.Mo. 1994 in that both maintained their registered agents at Missouri Baptist in St. Louis County and the allegations that give rise to the suit against Missouri Baptist and, by vicarious liability, against BJC occurred in St. Louis County. Additionally, Missouri Baptist has its principle place of business in St. Louis County. Thus the motion of Relator Hess to transfer venue of the case from St. Louis City to St. Louis County based on the incorporation of the non-profit venue arguments of BJC and Missouri Baptist required Respondent Neill to exercise her ministerial duty and transfer the case to St. Louis County.

Missouri law provides that once a circuit court determines that it does not have venue, it must transfer the case to any circuit where the plaintiff could have brought the suit. The Missouri Legislature provided statutory authority for a court to transfer venue.

“[T]he division of a circuit court in which a case is filed laying venue in the wrong division or wrong circuit shall transfer the case to any division or circuit in which it could have been brought.” §476.410, R.S.Mo. Similarly, this Court promulgated a rule that is in substantial accord with this statute. “[A]n action filed in the court where venue is improper shall be transferred to a court where venue is proper if a motion for such transfer is timely filed.” 51.045, V.A.M.R. This statute and this rule both state that the court will transfer the action or case. Neither the statute nor the rule provide for the splitting of the case but instead discuss the transfer of the case or action.

In interpreting the statute, the Missouri Supreme Court in *Rothermich* stated that if it were to determine that venue was improper in the circuit court, that the circuit court was required “to transfer the action to a county of proper venue.” *Rothermich*, at 197. The Court of Appeals, Eastern District, also stated that when venue is improper, the circuit court must transfer the action to a court of proper venue. *Abney v. Niswonger*, 823 S.W.2d 31, 33 (Mo.App. E.D. 1991). In addition, this Court in two cases involving venue and non-profit corporations ordered the transfer of the cases to a circuit court of proper venue. *State ex rel. SSM Health Care St. Louis v. Neill*, 78 S.W.3d 140, (Mo. banc 2002); *State ex rel. SSM Health Care St. Louis v. Neill*, 78 S.W.3d 145, (Mo. banc 2002). In none of these cases did the reviewing court state that the circuit judge could split the cases but instead ordered the circuit court to transfer the case or action.

In the former *SSM* case, the plaintiffs sued a doctor and SSM Health Care St. Louis (hereinafter SSM) in St. Louis City for the alleged negligence of the doctor in the delivery of a minor child at the SSM facility in St. Charles. In this case, SSM argued that

§355.176.4, R.S.Mo. applied to govern venue in that its registered agent and principal place of business were in St. Louis County and the cause of action accrued in St. Charles. Once the Supreme Court determined that §355.176.4, R.S.Mo. applied and that the only place for bringing the case was one of three locations, it ordered the circuit court to transfer the case to a proper venue. *State ex rel. SSM Health Care St. Louis v. Neill*, 78 S.W.3d 140, 145 (Mo. banc 2002).

In the latter *SSM* case, plaintiffs brought suit against SSM, a non-profit corporation in St. Louis County, a St. Louis County for profit corporation, and several individual persons residing in St. Louis County, St. Charles County, and the State of Pennsylvania. *State ex rel SSM Health Care St. Louis v. Neill*, 78 S.W.3d 145, 146 (Mo. banc 2002). Again SSM filed a motion to transfer venue of the case from St. Louis City based on the non-profit corporation statute. *Id.* SSM alleged that either St. Louis County or St. Charles County was the proper venue based on the residence of various defendants and where the cause of action arose. This Court expanded its prior *SSM* ruling from just non-profit corporations sued with individuals to non-profit corporations sued with individuals and corporations. This Court held in this second *SSM* case that the non-profit statute must be applied and that a non-profit can be sued in one of only three locations. *Id.* Thus the Court ordered the circuit court to transfer the case to a proper venue. *Id.*

The Eastern District of the Court of Appeals also has now found in that the entire case must be transferred in a case that is remarkably similar to the instant case. *State ex rel. BJC Health System v. Neill*, 86 S.W.3d 138 (Mo.App. E.D. 2002). In this case, the

plaintiffs named as defendants three non-profit corporations, one professional corporation, and two individuals. The Court ordered Respondent Neill in that case to St. Louis County. In the case, BJC, Missouri Baptist, and Barnes-Jewish Hospitals are non-profits that challenged venue pursuant to §355.176.4, R.S.Mo. *Id.*, at 139-140. The alleged negligent treatment occurred at Missouri Baptist. *Id.*, at 139. All defendants maintained their registered agents in St. Louis County. *Id.* Missouri Baptist had its principle place of business in St. Louis County and BJC and Barnes-Jewish maintained their principle places of business in St. Louis City. *Id.* The Court held that St. Louis County was the only venue where Missouri Baptist could be sued so the entire case was ordered transferred to St. Louis County. *Id.*, at 140.

In the instant case, Respondent Neill did not transfer the whole case but instead focused on perceived hypothetical questions and only transferred that part of the case against Missouri Baptist. (Exhibit 30, p. 11). In her order Respondent Neill said that “[V]enue is a privilege that is personal to each defendant and a defendant may not be compelled to submit to trial in a court absent statutory authority unless the issue of venue has been waived.” (Exhibit 30, p. 5). Respondent stated that she was compelled to determine venue separately as to each defendant because the law is unclear as to how venue should be determined when two non-profit corporations are sued and venue is proper as to one but not the other. (Exhibit 30, p. 4). Further reading of the order finds that Respondent determined that venue in St. Louis City could not be predicated on Missouri Baptist but might be against BJC based on the principle place of business prong of §355.176.4 (1) R.S.Mo. 1994. (Exhibit 30, p. 8). Respondent Neill then decided to

split the case and transfer the venue of the case as it relates to Missouri Baptist to St. Louis County and retain jurisdiction over that part of the case relating to BJC. (Exhibit 30, p. 11). Respondent Neill stated in her order of November 27, 2002, that it was apparent that venue was proper with regard to BJC in St. Louis City and with regard to Missouri Baptist in St. Louis County. (Exhibit 30, p. 4). What Respondent failed to state however that venue as to BJC was also proper in St. Louis County. (Exhibit 30). The order is silent as to the proper venue of the case against Relator Hess. (Exhibit 30).

The instant case is not the hypothetical case posed by Respondent in which venue is proper as to one non-profit corporation in St. Louis County but not the other. (Exhibit 30, p. 4). As set forth above, venue in St. Louis County is proper for Missouri Baptist under all three prongs of the non-profit corporate statute in that its principal place of business is in St. Louis County, the cause of action accrued in St. Louis County, and Missouri Baptist's registered agent was in St. Louis County on September 12, 2001. §355.176.4, R.S.Mo. Venue with regard to BJC is also proper in St. Louis County in that its registered agent on the date the Plaintiffs filed the *First Amended Petition* was in St. Louis County and, if BJC is liable, as Plaintiffs have alleged, it is because the cause of action accrued in St. Louis County. Therefore, St. Louis County is the proper venue for both BJC and Missouri Baptist. The hypothetical case proposed by the Respondent does not exist in this case and it is not presented under the facts.

Based on this analysis, the instant case is nearly identical to the former **SSM** case. In that case there was one non-profit corporate defendant and one physician. *State ex rel. SSM Health Care St. Louis v. Neill*, 78 S.W.3d 140, 141 (Mo. banc 2002). As set forth

above, venue as to SSM was proper in St. Louis County with regard to SSM's registered agent and the place of its principle place of business. Venue for SSM was also proper in St. Charles County as the place where the alleged cause of action accrued. The physician's venue was not directly discussed. However, this Court ordered the circuit court to transfer the case to a proper venue. *Id.*, at 145. The difference between the *SSM* case noted above and the instant case is that instead of one non-profit corporation, there are two non-profit corporations and venue in this case is proper in St. Louis County for both non-profit corporations. Thus, Respondent Neill should have transferred the venue of the entire case to St. Louis County. There is no conflict between the venue rights of BJC and Missouri Baptist, because pursuant to two prongs of the venue statute for nonprofit corporations, the suit could have been brought against both BJC and Missouri Baptist in one location, St. Louis County.

There is no reason to separate the case and allow part of the suit to proceed in St. Louis City and another part in St. Louis County. By doing so, Respondent is effectively requiring the parties to litigate a single case in two different venues causing unnecessary use of judicial resources when venue as to all defendants is in St. Louis County. The case could proceed with the plaintiffs and all defendants in one venue litigating all issues. Instead, the actions of Respondent Neill will have one defendant in St. Louis City defending itself based on what happened in St. Louis County at the facility of another defendant, itself involved in a lawsuit in St. Louis County. Also, Relator Hess will be in St. Louis City defending himself for what occurred at Missouri Baptist which is defending itself in St. Louis County. Judicial economy and common sense dictate that

Respondent should be compelled to transfer venue of the entire case to St. Louis County which is the proper venue for all defendants.

Respondent, in her *Suggestions in Opposition to Relator's Petition for Writ of Prohibition or, in the Alternative Mandamus*, states that venue is proper in St. Louis City Circuit Court based upon Plaintiffs understanding of this Court's interpretation of joinder of parties and venue pursuant to §508.040, R.S.Mo. Respondent relies on *State ex rel. Webb v. Satz*, 561 S.W.2d 290 (Mo. banc 1978) and §508.040, R.S.Mo. as well as other cases to state that if venue is appropriate as to BJC then it is appropriate as to Missouri Baptist.

However, Respondent's arguments relying on §508.040, R.S.Mo. are misplaced. In order to determine venue, the status of all of the defendants to a suit must be assessed according to the statutory venue provisions to confirm that the suit is in the proper venue. Section 355.176.4 R.S.Mo. is not analogous to §508.040, R.S.Mo. but rather is very similar to §508.060, R.S.Mo. Section 508.040 R.S.Mo. is not a special limiting venue statute but §508.060, R.S.Mo. is. In fact, this Court referred to §508.060, R.S.Mo. in interpreting §355.176.4, R.S.Mo. *State ex rel. SSM Health Care St. Louis*, at 144-145. This Court held, in *State ex rel. City of St. Louis v. Kinder*, 698 S.W.2d 4 (Mo. banc 1984), that §508.060, R.S.Mo. was a special venue statute and the statute prohibited suit in Cole County despite the presence of the Director of Revenue. *State ex rel. City of St. Louis*, at 6. In that case, the Plaintiff sued both the Director of Revenue and St. Louis City. This Court said that the language in §508.060, R.S.Mo. was mandatory and therefore venue was only proper in St. Louis City. *Id.* No one alleged that the Director

of Revenue was improperly joined in the case. Likewise, §355.176.4 R.S.Mo. is similar to §508.060, R.S.Mo. in that its language is also mandatory. In fact, this Court noted the similarity in intent between §508.060, R.S.Mo. and §355.176.4 R.S.Mo. and stated a suit against a nonprofit must be instituted in one of three locations. *SSM Health Care St. Louis*, at 144-145.

Furthermore, as this Court said in *SSM Health Care St. Louis*, §508.040, R.S.Mo., is different from §355.176.4, R.S.Mo. in that the latter has the word “only” in it. *SSM Health Care St. Louis*, at 144. Thus §355.176.4 R.S.Mo. is similar to §508.060, R.S.Mo. and not §508.040, R.S.Mo. in that §355.176.4 R.S.Mo. also is a restrictive venue statute employing the word “only” with regard to where venue is proper.

Using this analysis, venue in St. Louis City is not proper for Missouri Baptist, a nonprofit corporation. Missouri Baptist’s principle place of business is only in St. Louis County; the alleged negligence occurred in St. Louis County; and, Missouri Baptist’s registered agent for the nonprofit corporation is maintained in St. Louis County. There is no basis for venue in St. Louis City as to Missouri Baptist. Venue in St. Louis County is proper for BJC because that is where the alleged negligence occurred and BJC maintains its registered agent in St. Louis County. Thus, venue is proper as to both nonprofit corporations in St. Louis County and judicial economy mandates the transfer of the entire case to St. Louis County. The argument of Respondent in her suggestions in response to the writ with regard to joinder based on BJC is misguided because venue as to both nonprofit corporations is proper in St. Louis County.

III. Relator Hess is entitled to an order prohibiting Respondent from taking any action other than transferring this case from the St. Louis City to St. Louis County because if venue must be separately considered, then the venue of Dr. Hess in relation to Missouri Baptist and BJC should have been considered and the case transferred to St. Louis County in that Dr. Hess allegedly performed the negligent acts in St. Louis County at Missouri Baptist and St. Louis County is the proper venue pursuant to §355.176.4, R.S.Mo. for Missouri Baptist.

In the alternative, Respondent failed in her order of July 31, 2002, to consider the separate venue of Relator Hess as Plaintiffs did not allege any facts constituting joint liability between Relator Hess and either BJC or Missouri Baptist. Without these facts, the Respondent should have separately determined the venue of Relator Hess and then transferred that portion of the case involving Relator Hess to St. Louis County.

Rule 52.05(a) V.A.M.R. provides that “[A]ll persons may be joined in one action as defendants if there is asserted against them jointly, severally, or in the alternative, any right to relief in respect of or arising out of the same transaction, occurrences or series of transactions or occurrences and if any question of law or fact common to all of them will arise in the action.” Rule 52.05(a) V.A.M.R. But joinder pursuant to this rule cannot be used to extend venue. Rule 51.01 V.A.M.R.; *Turnbough v. Gaertner*, 589 S.W.2d 290, 292 (Mo. banc 1979); *State ex rel. Sims v. Sanders*, 886 S.W.2d 718, 720 (Mo.App. E.D. 1994). Absent an allegation of joint or common liability, venue must be separately established as to each defendant. Joint liability is the “concerted action by two or more

persons that resulted in the infliction of an injury.” *State ex rel. Tarrasch v. Crow*, 622 S.W.2d 928, FN4 (Mo. 1981). There must be a common scheme or design and as such these are rather rare. *Id.* More common is the tort where two or more persons act independently to cause a single injury. *Id.* “Liberalization of joinder rules in the United States, however, has permitted an injured party to join concurrent tortfeasors in a single action. As a result, the terms joint tort and joint tortfeasors have been applied to both concurrent and concerted action.” *Id.*

In this case Plaintiffs alleged that Relator Hess is a cardiac physician licensed to practice medicine in Missouri but did not allege any relationship between Relator Hess and BJC. (Exhibit 10, ¶5). The allegations in Count III and Count IV do not allege any connection between Relator Hess and BJC. (Exhibit 10, p. 13-19.) However, Plaintiffs did allege that Relator Hess gave an order to the staff of Missouri Baptist. (Exhibit 10, ¶ 22 (d).)

Considering these facts, BJC and Relator Hess are merely concurrent tortfeasors and not joint tortfeasors as previously defined by the Court. As a concurrent tortfeasor his separate venue must be determined separately. Rule 51.01 V.A.M.R.; *Turnbough*, at 292. Venue is determined then by the appropriate venue statute.

Relator Hess allegedly performed the tortuous conduct at Missouri Baptist and venue as to Missouri Baptist is in St. Louis County for the reasons set forth above in that the alleged cause of action occurred in St. Louis County and Missouri Baptist maintains both its registered agent and principle place of business in St. Louis County. §355.176.4, R.S.Mo. Considering that the venue as to Missouri Baptist is only available in St. Louis

County, then the cause of action as to Relator Hess should be transferred to St. Louis County also. §355.176.4, R.S.Mo.; *SSM Health Care St. Louis v. Neill*, 78 S.W.3d 140 (Mo. banc 2002).

CONCLUSION

Respondent Neill failed to properly consider the motion to transfer venue of Relator Hess in that she held, *sua sponte*, that Relator Hess did not file his motion in a timely manner because he did not obtain court approval of a professional agreement between counsel that was memorialized in an entry in the Court's file that allowed Relator Hess an additional thirty days to file a responsive pleading or motion including a motion to transfer venue. Relator Hess and Plaintiffs in the underlying case had a professional agreement allowing Relator Hess additional time to file his pleading or motion and this agreement was filed in the file within the time allowed. It did not have the approval of Respondent. However, as this Court held, it is not logical to give effect to such agreements even if they are not approved. Relator Hess then filed a motion to transfer venue within the time allowed according to the Circuit Clerk of St. Louis City. The motion was timely filed and Respondent Neill should have reached the merits of the motion.

The record before Respondent Neill based on the motion of Relator Hess to transfer venue that explicitly joined in the motions of BJC and Missouri Baptist to transfer venue based on the non-profit corporate statute required her to transfer the venue of the case to St. Louis County and yet she did not transfer the case. Both BJC and Missouri Baptist are non-profit corporations and as such venue is proper in any one of

only three locations: the place where the corporation has its principle place of business; the place where the cause of action accrued; or where the corporation had an office for its registered agent. While Respondent discussed hypothetical questions regarding how to determine venue when one non-profit corporation cannot be sued in any of the three locations another non-profit can be sued, the actual undisputed facts demonstrate that both BJC and Missouri Baptist maintain their registered agents in St. Louis County and the cause of action accrued in St. Louis County. Thus both BJC and Missouri Baptist can be sued under two different prongs of the venue statute in St. Louis County. §355.176.4 (2) and (3), R.S.Mo. 1994. On the other hand, Missouri Baptist cannot be sued in St. Louis City because it does not meet any of the prongs in order for the court to find venue in St. Louis City. §355.176.4, R.S.Mo.

Because venue is inappropriate as to Missouri Baptist in St. Louis City and both BJC and Missouri Baptist are subject to suit in St. Louis County, Respondent Neill should have transferred the whole case to St. Louis County as that is an appropriate venue where both BJC and Missouri Baptist can be sued for this single cause of action.

In the alternative, Respondent should transfer the case to St. Louis County because if Relator Hess is a concurrent tortfeasor as alleged by Plaintiffs, then his separate venue must be determined. Relator Hess allegedly performed the negligent conduct at Missouri Baptist and, pursuant to §355.176.4 R.S.Mo., Missouri Baptist can only be sued in St. Louis County. Therefore the venue of the case as to Relator Hess is proper in St. Louis County only.

Relator Hess respectfully requests that this Court make its preliminary Writ of Prohibition permanent, thereby precluding Respondent Judge Neill from taking any further action, other than to transfer the case to St. Louis County, and for such further orders as the Court deems meet, just, and proper.

**DAVID I. HARES, ESQ.
& ASSOCIATES**

BY _____
David I. Hares, Esq.
Missouri Bar Number 28600
Robert Joseph Amsler, Jr., Esq.
Missouri Bar Number 37545
7700 Bonhomme Avenue, Suite 530
St. Louis, Missouri 63105-1924
Phone (314) 721-4033
Fax (314) 721-7990
Attorneys for Relator John Hess, M.D.

CERTIFICATE OF COMPLIANCE WITH
MISSOURI SUPREME COURT RULE 84.06(b) and (c) AND RULE 84.06(g)

The undersigned certifies that the foregoing brief complies with the limitations contained in Missouri Supreme Court 84.06(b) and, according to the word count function on Microsoft Word XP by which it was prepared, contains 11,668 words, exclusive of the cover, Certificate of Service, this Certificate of Compliance, the signature block, and the appendix.

The undersigned further certifies that the diskette filed herewith containing the Relator's Opening Brief in electronic form complies with Missouri Supreme Court Rule 84.06(g) because it has been scanned for viruses and is virus free.

**DAVID I. HARES, ESQ.
& ASSOCIATES**

BY _____
David I. Hares, Esq.
Missouri Bar Number 28600
Robert Joseph Amsler, Jr., Esq.
Missouri Bar Number 37545
7700 Bonhomme Avenue, Suite 530
St. Louis, Missouri 63105-1924
Phone (314) 721-4033
Fax (314) 721-7990
Attorneys for Relator John Hess, M.D.

CERTIFICATE OF SERVICE

A copy of the above and foregoing was hand delivered this 29th day of May, 2003, to: ***The Honorable Margaret M. Neill***, Circuit Court of St. Louis, 10 North Tucker, St. Louis, Missouri 63101; ***The Honorable Michael David***, Circuit Court of St. Louis, 10 North Tucker, St. Louis, Missouri 63101; ***M. Graham Dobbs, Esq.***, Attorney for Plaintiff, 701 Market Street, Suite 800, St. Louis, Missouri 63101, and ***Paul N. Venker, Esq.***, Attorney for Defendants BJC and Missouri Baptist Hospital, 10 South Broadway, Suite 1600, St. Louis, Missouri 63102.

IN THE
MISSOURI SUPREME COURT

NO. SC 85138

STATE OF MISSOURI, ex rel. JOHN HESS, M.D.

Relator,

v.

MARGARET M. NEILL, Circuit Court Judge, 22nd Judicial Circuit, Missouri,

Respondent.

APPEAL FROM THE CIRCUIT COURT OF ST. LOUIS CITY
CAUSE NO. 012-00056

APPENDIX TO THE OPENING BRIEF OF RELATOR JOHN HESS, M.D.

David Ivor Hares, Esq.
Missouri Bar Number 26800
Robert Joseph Amsler, Jr., Esq.
Missouri Bar Number 37545
David I. Hares, Esq. & Associates
7700 Bonhomme Avenue
St. Louis, Missouri 63105-1924
(314) 721-4033; (314) 721-7990 (Facsimile)
ATTORNEYS FOR RELATOR

TABLE OF CONTENTS

Page

ORDERS

Order of Judge Neill dated July 31, 2001.....	A 3
Order of Judge Neill dated November 27, 2001.....	A 8

STATUTES

§355.176.4.R.S.Mo.....	A 20
§476.410, R.S.Mo.....	A 21
§508.040, R.S.Mo.....	A 22
§508.060, R.S.Mo.....	A 23

SUPREME COURT RULES

44.01 V.A.M.R.....	A 24
51.01 V.A.M.R.....	A 26
51.045 V.A.M.R.....	A 27
52.05(a) V.A.M.R.....	A 29

LOCAL RULE

Rule 21.7.....	A 30
----------------	------

§355.176.4, R.S.Mo.

Suits against a nonprofit corporation shall be commenced only in one of the following locations:

- (1) The county in which the nonprofit corporation maintains its principal place of business;
- (2) The county where the cause of action accrued;
- (3) The county in which the office of the registered agent for the nonprofit corporation is maintained.

§476.410, R.S.Mo. Transfer of case filed in wrong jurisdiction

The division of a circuit court in which a case is filed laying venue in the wrong division or wrong circuit shall transfer the case to any division or circuit in which it could have been brought.

§508.040, R.S.Mo. Suits against corporations, where commenced

Suits against corporations shall be commenced either in the county where the cause of action accrued, or in case the corporation defendant is a railroad company owning, controlling or operating a railroad running into or through two or more counties in this state, then in either of such counties, or in any county where such corporations shall have or usually keep an office or agent for the transaction of their usual and customary business.

§508.060, R.S.Mo. Actions against counties, where instituted

All actions whatsoever against any county shall be commenced in the circuit court of such county, and prosecuted to final judgment and execution therein, unless removed by change of venue to some other county, in which case the action or actions so removed shall be prosecuted to final judgment and execution in the circuit court of such other county.

44.01 V.A.M.R. Time, Computation of--Extension--Expiration of Turn--Service of Motions

(a) Computation. In computing any period of time prescribed or allowed by these rules, by order of court, or by any applicable statute, the day of the act, event, or default after which the designated period of time begins to run is not to be included. The last day of the period so computed is to be included, unless it is a Saturday, Sunday or a legal holiday, in which event the period runs until the end of the next day which is neither a Saturday, Sunday nor a legal holiday. When the period of time prescribed or allowed is less than seven days, intermediate Saturdays, Sundays and legal holidays shall be excluded in the computation.

(b) Enlargement. When by these rules or by a notice given thereunder or by order of court an act is required or allowed to be done at or within a specified time, the court for cause shown may at any time in its discretion (1) with or without motion or notice order the period enlarged if request therefor is made before the expiration of the period originally prescribed or as extended by a previous order or (2) upon notice and motion made after the expiration of the specified period permit the act to be done where the failure to act was the result of excusable neglect; but it may not extend the time for taking any action under rules 52.13, 72.01, 73.01, 75.01, 78.04, 81.04 and 81.07 or for commencing civil action.

(c) Unaffected By Expiration of Term. The period of time provided for the doing of any act or the taking of any proceeding is not affected or limited by the continued

existence or expiration of a term of court. The continued existence or expiration of a term of court in no way affects the power of a court to do any act or take any proceeding in any civil action pending before it, which it is otherwise by law authorized to do or take.

(d) Motions--Notice Required--Affidavits. A written motion, other than one which may be heard ex parte, and notice of the hearing thereof shall be served not later than five days before the time specified for the hearing, unless a different period is fixed by law or court rule or by order of the court. Such an order may for cause shown be made on ex parte application. When a motion is supported by an affidavit, the affidavit shall be served with the motion; and, except as otherwise provided by law or rule in connection with a motion for a new trial, opposing affidavits may be served not later than one day before the hearing, unless the court permits them to be served at some other time.

51.01 V.A.M.R. Jurisdiction and Venue not Affected

These Rules shall not be construed to extend or limit the jurisdiction of the courts of Missouri, or the venue of civil actions therein.

51.045 V.A.M.R. Transfer of Venue When Venue Improper

Text of subdivision (a) effective until January 1, 2003

(a) An action filed in the court where venue is improper shall be transferred to a court where venue is proper if a motion for such transfer is timely filed. Any motion to transfer venue shall be filed:

- (1) Within the time allowed for responding to an adverse party's pleading, or
- (2) If no responsive pleading is permitted, within thirty days after service of the last pleading.

If a motion to transfer venue is not timely filed, the issue of improper venue is waived.

Text of subdivision (a) effective January 1, 2003

(a) An action brought in a court where venue is improper shall be transferred to a court where venue is proper if a motion for such transfer is timely filed. Any motion to transfer venue shall be filed:

- (1) Within the time allowed for responding to an adverse party's pleading, or
- (2) If no responsive pleading is permitted, within thirty days after service of the last pleading.

If a motion to transfer venue is not timely filed, the issue of improper venue is waived.

(b) Within ten days after the filing of a motion to transfer for improper venue, an opposing party may file a reply denying the allegations in the motion to transfer. If a reply is filed, the court shall determine the issue.

If the issue is determined in favor of the movant or if no reply is filed, a transfer of venue shall be ordered to a court where venue is proper. When a transfer of venue is ordered, the entire civil action shall be transferred unless a separate trial has been ordered. If a separate trial is ordered, only that part of the civil action in which the movant is involved shall be transferred.

(c) A request for transfer of venue under this Rule 51.045 shall not deprive a party of the right to a change of venue under Rule 51.03 if the civil action is transferred to a county having seventy-five thousand or fewer inhabitants. A party seeking a change of venue under Rule 51.03, after transfer of venue pursuant to this Rule 51.045, shall make application therefor within the later of:

(1) The time allowed by Rule 51.03, or

(2) Ten days of being served with notice of the docketing of the civil action in the transferee court as provided by Rule 51.10.

**52.05. V.A.M.R. Who may Join as Plaintiff and Defendant--Protective Orders,
When**

(a) Permissive Joinder. All persons may join in one action as plaintiffs if they assert any right to relief jointly, severally, or in the alternative in respect of or arising out of the same transaction, occurrence or series of transactions or occurrences and if any question of law or fact common to all of them will arise in the action. All persons may be joined in one action as defendants if there is asserted against them jointly, severally, or in the alternative, any right to relief in respect of or arising out of the same transaction, occurrences or series of transactions or occurrences and if any question of law or fact common to all of them will arise in the action. A plaintiff or defendant need not be interested in obtaining or defending against all the relief demanded. Judgment may be given for one or more of the plaintiffs according to their respective rights to relief, and against one or more defendants according to their respective liabilities.

(b) Separate Trials--Protective Orders. The court may make such orders as will prevent a party from being embarrassed, delayed, or put to expense by the inclusion of a person as a party against whom the party asserts no claim and the person asserts no claim against the party and may order separate trials or make other orders to prevent delay or prejudice.

Rule 21.7 of the Twenty-Second Judicial Circuit—Agreement of Attorneys

No agreement, understanding or stipulation of the parties or their attorneys concerning any pending cause, or any matter of proceeding therein, will be recognized or enforced by this Circuit Court unless made in writing and filed in the cause or made in open court.

**DAVID I. HARES, ESQ.
& ASSOCIATES**

BY _____

David I. Hares, Esq.
Missouri Bar Number 28600
Robert Joseph Amsler, Jr., Esq.
Missouri Bar Number 37545
7700 Bonhomme Avenue, Suite 530
St. Louis, Missouri 63105-1924
Phone (314) 721-4033
Fax (314) 721-7990
Attorneys for Relator John Hess, M.D.

CERTIFICATE OF SERVICE

A copy of the above and foregoing was hand delivered this 29th day of May, 2003, to: ***The Honorable Margaret M. Neill***, Circuit Court of St. Louis, 10 North Tucker, St. Louis, Missouri 63101; ***The Honorable Michael David***, Circuit Court of St. Louis, 10 North Tucker, St. Louis, Missouri 63101; ***M. Graham Dobbs, Esq.***, Attorney for Plaintiff, 701 Market Street, Suite 800, St. Louis, Missouri 63101, and ***Paul N. Venker, Esq.***, Attorney for Defendants BJC and Missouri Baptist Hospital, 10 South Broadway, Suite 1600, St. Louis, Missouri 63102.
